

REMARKS

The allowance of Claims 4 - 7 and 19 - 20 is noted, as is the indication that Claims 13 - 15 are also directed to allowable subject matter. Those claims are being written in independent form, and applicant trusts that they will now be allowed.

Claim 1 has now been rejected under 35 U.S.C. §102 as being anticipated by the newly cited Shields patent (U.S. 4,982,957).

Contrary to the Examiner's suggestion, the weight plates shown in Shields are not formed in sections which are hinged together. The weights 39 themselves have only one section with a slot in which the bar is received. Elements 50 and 61 are not sections of weight plates, but rather retaining clips which are pivotally secured to the weights by bolts 51, 62.

In order to further distinguish over Shields, Claim 1 is being amended to specify that the weight plates are formed in sections of substantially equal size and weight which are hinged together and adapted to be selectively attached to the bar by movement between open and closed positions. With this clarification, applicant trusts that the rejection will be withdrawn and that Claim 1 will now be allowed.

Claims 2, 3, 8 and 9 have been rejected under 35 U.S.C. §103 as being unpatentable over Shields in view of the Caribou II Gym shown in the Yukon Fitness catalog. Claims 2 and 3 depend from Claim 1 and are directed to patentable subject matter for the same reasons as their amended parent claim, and Claim 9 is being amended to depend from Claim 1 as well. Claim 8 is being cancelled in order to advance the application toward allowance.

Claim 10, which has been rejected under 35 U.S.C. §103 as being unpatentable over Shields in view of the Caribou II Gym and Oswald et al. (U.S. 5,060,939), is clearly directed to patentable subject matter.

Initially, this is a case of impermissible hindsight reconstruction in which the Examiner seeks to combine selected elements from different references when there is no motivation or other basis for doing so other than applicant's own disclosure and claims. Not only is there no basis for combining the elements of Shields with those of the machine shown in the Yukon catalog, even more so, there is no basis for combining the teachings of Oswald et al. with those of the other two references.

Moreover, even if the teachings of Oswald et al. were somehow combined with those of the other two references, they still would not lead to applicant's invention

because the bench lifting mechanism shown in Oswald et al. is not anything like applicant's invention. The element 204 characterized by the Examiner as the under side of the bench is actually one of three undercarriages which are linked together to form a four-bar linkage (Col. 26, lines 26 *et seq.*), and lifting motion is transferred from undercarriage 204 to undercarriage 304 by pin 314. Contrary to the Examiner's characterization, studs 222 and flanges 318 do not act in cam-like fashion, and they are not a cam or a cam follower. Studs 222 simply serve as stops against which the noses 318 of flanges 312 abut to limit the downward movement of front and center sections of the bench (See Col. 3, lines 4 - 8).

Claims 11 and 17 have been rejected under 35 U.S.C. §103 as being unpatentable over Shields in view of the Caribou II Gym, the newly cited Jones patent (U.S. 5,066,004) and Tracy (U.S. 4,971,318). This is another example of impermissible hindsight reconstruction on the part of the Examiner, and the inclusion of Claim 17 in the rejection appears to be an error.

First the Examiner tries to combine the teachings of Shields and the Yukon catalog when there is no basis for doing so, then he has to modify that combination with selected elements from Jones, and finally he tries to modify that combination with the weight plates of Tracy. Not only is there no motivation for such a combination anywhere in the four references, the fact that the Examiner has had to rely on a separate reference for almost every element of the claim is itself evidence that the invention is not obvious. Moreover, the combination suggested by the Examiner will not work. In that regard, it will be noted that the weight shafts 24, 25 in Jones are inclined, even in the rest position (See Fig. 1) which means that the weights are resting on each other so they cannot be added or removed radially. Thus, using hinged weight plates would serve no useful purpose in the machine of Jones and since using such plates in that machine would render them unfit for their intended purpose, the combination is not a proper basis for an obviousness rejection.

Claim 17 is directed primarily to the mechanism for raising and lowering the bench and includes the following elements which are not found in or even remotely suggested by Shields, the Yukon catalog, Jones and/or Tracy: a bench having a support pivotally mounted on a frame beneath the bar for movement between a horizontal position and a downwardly inclined position, a lifting arm which engages the under side of the support in cam-like fashion and is affixed to a shaft mounted on the

frame for rotation between upright and retracted positions, and a handle operable by a person on the bench for turning the shaft to move the arm between the upright and retracted positions and thereby move the support between the horizontal and downwardly inclined positions.

Next, Claims 12, 21 and 22 have been rejected under 35 U.S.C. §103 as being unpatentable over Hettick, Jr. (U.S. 4,529,198) in view of another patent to Shields (U.S. 4,822,034). The elements 18, 19 which the Examiner has characterized as a frame and posts in Hettick, Jr. are actually a spacer bar and guide rods between which the end portions of the weight bar are received to guide the weight boxes on the bar back to the proper locations on bases 15 as they are returned to their rest position. Even though the weight bar may be guided for movement between the guide rods during a limited portion of its travel, it is not constrained for movement along them. Once lifted above the rods, the bar is free to be moved anywhere. In contrast, in applicant's invention, the weight bar is constrained for movement along the posts. It cannot go anywhere else. This feature is expressly claimed in Claim 12, and even if the elements of Hettick, Jr. were somehow combined with those of Shields '034, it would not lead to the invention defined by Claims 12.

Claim 21 is being amended to further clarify the differences between the invention and the references in calling for a pair of laterally spaced weight stands, an elongated bar extending between the weight stands, a plurality of weight plates which are disposed side-by-side in upright positions on each of the stands and formed in sections of substantially equal size and weight which are hinged together and adapted to be selectively attached to the bar by movement between open and closed positions without being removed from the weight stands, means for holding the plates in their upright and open positions on the stands when the plates are detached from the bar, and means for supporting a person in position for exercising with the bar and the weights attached thereto. This combination of elements is neither found in nor suggested by the references.

Claim 22 depends from Claim 21 and is directed to patentable subject matter for the same reasons as its amended parent claim.

Finally, in another clear case of impermissible hindsight reconstruction, Claim 18 has been rejected under 35 U.S.C. §103 as being unpatentable over the Caribou II Gym and Jones. In making this rejection, the Examiner is attempting to combine and

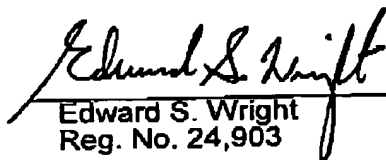
modify selected elements from the different references, using applicant's own disclosure and the claim in question as a blueprint for doing so. Also, it is not at all clear how the Examiner would modify the Caribou II Gym to have individually operable leg extension bars, and such modification could be so extensive that it would be well beyond the purview of obviousness. Moreover, there is no teaching in either of the references of weight plates resting on supports for selective attachment to the leg extension bars without being removed from the supports, as Claim 18 is being amended to include.

As amended, Claim 18 distinguishes over the references in calling for a horizontally extending bar, a plurality of weight plates removably mounted on the bar, means supporting the bar at a predetermined rest height, a bench having a section pivotally mounted on a frame beneath the bar for movement between a horizontal position and a downwardly inclined position, a pair of individually operable leg extension bars mounted on the frame at an end of the bench away from the bar, and a plurality of weight plates resting on supports for selective attachment to the leg extension bars without being removed from the supports.

With this amendment, Claims 4 - 7 and 19 - 20 have been allowed, Claims 13 - 15 have been amended in the manner the Examiner has indicated would make them allowable, and the remaining claims distinguish over the references for the reasons discussed above. Hence, the application should be in condition for allowance.

The Commissioner is authorized to charge any fees required in connection with this amendment, including extension fees, to Deposit Account 50-2975, Order No. A-72219.

Respectfully submitted,


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